

D-13

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 9, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:99OD-139
OAHU

Amend Prior Board Action of June 9, 2005 (Item D-17), Issuance of Direct Lease to Windward Retreat Center for Religious, Social (Community), and Charitable Eleemosynary Purposes, Kaaawa, Koolauloa, Oahu, Tax Map Keys (1) 5-1-14:por. 47 and 5-1-11:por. 55

BACKGROUND:

At its June 9, 2005 meeting, under agenda Item D-17, the Land Board approved to rescind its prior approval of December 15, 1995 and issue a direct lease to Windward Retreat Center for religious, social (community), and charitable eleemosynary purposes. The Board further amended its approval by approving the lease conditions and stating that the rent shall not be more than \$500 per month. Staff is to bring this back for Board decision on what the annual rent should be.

REMARKS:

Subsequently, the Applicants have determined the rent of \$500 per month (or \$6,000 per year) is adequate and will not disagree with the Board.

The Attorney General's office has informed us there are several items that need to be approved by the Board. First, confirm that the rent shall be \$500 per month or \$6,000 per year. Second, Recommendation N (Change the breach provision of non-financial items. The cure period shall be thirty (30) days) conflicts with Section 171-20, HRS which provides a cure for non-financial items to be within sixty (60) days.

It should be noted that the Board and staff have grappled with the issue of non-profit leasing of State lands under the jurisdiction of the Land Division. Direct lease(s) issued pursuant to Section 171-43.1, Hawaii Revised Statutes, the Board has the statutory authority to grant nominal consideration. Because past attempts at developing guidelines on how to handle all non-profits on a fair and consistent basis have not been successful. On May 13, 2005, the Land Board established a Minimum Rent Policy that stated, among other things, that the Minimum Rent for Leases be no less than \$480 per year. Generally, Land Division issues Leases at

fair market value, as determined by appraiser or public auction. Staff believes "nominal rent" under Section 171-43.1, Hawaii Revised Statutes ought to be anywhere between fair market rent, or lower, but not lower than the minimum rent of \$480 per year. Staff has no objections and neither the Applicant to accept either \$6,000 per year rental or \$480 per year.

This is an Applicant obtaining a direct lease from the Board pursuant to Section 171-43.1, Hawaii Revised Statutes. Staff is requesting the rental reopenings to be conducted on the 10th and 20th years be deleted. The standard lease provision states: Determination of rental upon reopening of the annual rental. The rental for any ensuing period shall be the fair market rental at the time of reopening. If the Board has determined that \$6,000 per annum or \$480 is acceptable, there should be no need for reopening the rent in the future at "fair market rent".

Currently, the process for obtaining City and County of Honolulu permits and approvals is very slow (backlogged). The Applicant would have difficulty in complying with our Recommendation B (Obtain all required City permits and approvals, including but not limited to, Special Management Area (SMA) permit, Conditional Use Permit within sixty (60) days.) Based on this, staff is recommending this be amended by deleting 'Obtain' and replacing it with 'Shall start'.

Therefore, to comply with instructions from the Attorney General's office, staff is requesting the Board to confirm the annual rent, delete Recommendation N (Change the breach provision of non-financial items. The cure period shall be thirty days.) and delete the rental reopening provision (At the end of the 10th and 20th years of the lease term, by staff or independent appraisal.) in its entirety. Amend Recommendation B (Obtain all required City permits and approvals, including but not limited to, Special Management Area (SMA) permit, Conditional Use Permit within sixty days.) by deleting 'Obtain' and replacing it with 'Shall start'. This will allow staff to move forward and issue the new lease to the Applicant.

RECOMMENDATION: That the Board

- A. Amend its prior action of June 9, 2005, under Item D-17, by:
1. The annual rental shall be \$480;
 2. Delete Recommendation N;
 3. Delete Rental reopening provision;
 4. Amend Recommendation B by deleting Obtain and replacing it with Shall start; and

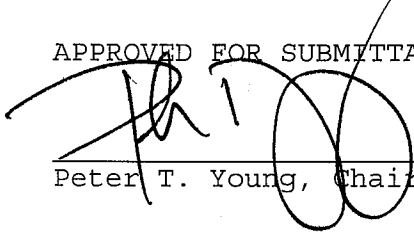
5. All terms and conditions listed in its June 9, 2005 approval to remain the same.

Respectfully Submitted,



Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

AMENDED

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 9, 2005

EXHIBIT "A"

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 99OD-139

OAHU

Resubmittal - Rescind Prior Board Action of December 15, 1995, (Item F-10) and Issuance of Direct Lease to Windward Retreat Center for Religious, Social (Community), and Charitable Eleemosynary Purposes, Kaaawa, Koolauloa, Oahu, Tax Map Key: (1) 5-1-14:por. 47 and 5-1-11:por. 55

APPLICANT:

Windward Retreat Center, whose business and mailing address is 51-019 Lau Place, Kaaawa, Hawaii 96730.

LEGAL REFERENCE:

Section 171-43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands at Kaaawa, Koolauloa, Oahu, identified by Tax Map Key: (1) 5-1-14:47, as shown on the attached map labeled Exhibit A.

AREA:

Approximately 3.670 acres, more or less, to be confirmed by DAGS Survey.

ZONING:

State Land Use District: Urban
City & County of Honolulu LUO: R-5

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES _____ NO X

CURRENT USE STATUS:

Vacant and unencumbered.

As Amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON *MO*

ITEM D-17

June 9, 2005

EXHIBIT "A"

CHARACTER OF USE:

Retreat center for religious, social (community), and charitable eleemosynary purposes.

LEASE TERM:

Thirty-five (35) years

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

Fair market annual rent to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the end of the 10th and 20th years of the lease term, by staff or independent appraisal.

MINIMUM IMPROVEMENTS:

Within 5 years from the commencement date of the lease, the Lessee shall have completed the construction of improvements having a value of not less than \$284,400. Said improvements shall be in accordance with plans submitted to the Chairperson for approval prior to their construction.

IMPROVEMENT BOND:

\$175,617.00

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on July 8, 1993 with a finding of no significant impact (FONSI).

DCCA VERIFICATION:

Place of business registration confirmed:	YES	<u> x </u>	NO	<u> </u>
Registered business name confirmed:	YES	<u> x </u>	NO	<u> </u>
Applicant in good standing confirmed:	YES	<u> x </u>	NO	<u> </u>

APPLICANT REQUIREMENTS:

EXHIBIT "A"

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial rent and
- 2) Pay for the costs of public notice pursuant to section 171-16.

BACKGROUND:

This submittal was deferred by the Land Board at its meeting of August 13, 2004, under agenda item D-8. Applicants requested a deferral.

REMARKS:

On November 23, 2004, Applicants submitted a list of concerns that we have attached as Exhibit B and they are:

Item 2, the annual rent: Staff explained to the Applicant that the past practice was in error. As previously stated: "The Department of the Attorney General has corrected our Department and stated that it is improper to transfer to OHA 100% of the 20% of fair market rent we are collecting." Furthermore, to eliminate favoritism and lack of expertise by our staff, our submittals will now recommend fair market rent and the Board, who has the authority, can determine what the annual rent should be for the non-profit group. In this case, Applicant is requesting that the Board consider that annual rent should stay at 25% of fair market value or the rent should be made nominal. We defer to the Land Board on this.

Item 4, the minimum improvement amount: A revised Business Plan (Exhibit C) has been submitted. The construction cost as of December 19, 2004 is estimated to be \$284,400 for 2 structures totaling 2,844 square feet. Therefore, staff has changed the minimum improvement amount previously from \$775,000 to \$427,000 to now, \$284,400. Staff has corrected our submittal.

Item 5, the improvement bond amount: Our practice is to obtain a bond in the amount of the minimum improvements, not two times the annual rental. The two times the annual rental is for a performance bond. Applicants revised business plan reflects using labor donated by members and materials donated by the construction industry in the amount of \$108,783. Approximately \$175,617 of the construction will be done by a licensed contractor. Applicant is requesting the improvement bond amount reflect \$175,617. Staff has corrected our submittal.

Item 6, not including the road remnants into the lease: Applicant is requesting the remnants not be subdivided out from the larger parcel.

Currently, portions of roads (or remnants) are used by the general public as a road and are part of the The Kaaawa Beach Owners Association roadways. The Association has expressed interest in acquiring these portions of road. Also, since August 2004, all of the

June 9, 2005

EXHIBIT "A"

abutting property owners have expressed interest in purchasing portions of the remnants adjacent to their lots. Mr. John Morgan, Kualoa Ranch Inc. has indicated he has contacted a licensed land surveyor to complete the subdivision and consolidation. The owners want to complete the acquisition. Applicant is proposing an exception be made to allow the State to withdraw these road remnants and sell the road remnants to the abutting property owners in the future. Currently, all State leases have a withdrawal provision - "The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the lease." Staff has corrected our submittal.

Item 8, DCCA verification: That matter has been resolved with DCCA. Staff has corrected our submittal.

Items 11, 12, and 13, cover the requirement to complete survey map and description, City permits and approvals, and subsurface archaeological survey prior to execution of the new lease: Applicant is requesting the lease be executed before these items are completed. Applicant has indicated they will obtain these approvals, but will not expend any more monies unless they have assurance they will get the lease from the State. Staff has corrected our submittal. Additionally, staff recommends the breach provision in the new lease be modified for breach of non-financial items; the cure period shall be thirty (30) days instead of sixty (60) days.

Item 17, the lease condition not to use Hiwahiwa Road as a right-of-way or driveway for ingress or egress: Applicant has submitted letter dated December 11, 2004 from Ms. DeeDee Letts, President of the Kaaawa Community Association indicating Humalani Road would be the ingress and egress for the retreat center and Hiwahiwa Road would be the access for caretaker residence (Exhibit D). Staff has corrected our submittal.

Item 18, additional lease conditions: Applicant is requesting the lease conditions approved by the Kaaawa Community Association January 1994 (see Exhibit E) be incorporated into the new lease. For Items i and j, staff contacted the City if such requirement is necessary. The City is concerned that establishing setback requirements in the lease

June 9, 2005

EXHIBIT "A"

may conflict with the City's setback ordinances. For Item 1, staff discussed this with State and Oahu Civil Defense and there is no such certification program. Staff has corrected our submittal.

The Board of Land and Natural Resources (Board) typically issues leases to private individuals and entities via public auction. The rent is established as fair market rent by appraisal. When a rental reopening occurs during the term of the lease an appraiser sets the new rent at fair market value.

However, when the tenant or prospective tenant is an eleemosynary (charitable) organization, the Board may lease, at a nominal rent, by direct negotiation. The statute that addresses this option of the Board is summarized as follows:

§171-43.1 Lease to eleemosynary organizations. The board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service. [L 1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c 202, §1; am L 1991, c 212, §3]

It is noted that the 501(c)(1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while the 501(c)(3) organization is a privately organized charitable organization.

Therefore, when considering lease dispositions to eleemosynary (charitable) organizations, the Board has the option to dispose of via public auction at fair market rent or by direct negotiation at nominal rent.

RECOMMENDATION: That the Board:

1. Rescind its prior action of December 15, 1995, under agenda item F-10.
2. Determine that the lease rent for Windward Retreat Center shall be:

Fair market rent

Or

Nominal rent.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to the Windward Retreat Center covering the subject area under the terms and conditions cited above,

EXHIBIT "A"

which are by this reference incorporated herein and further subject to the following:


- A. The standard terms and conditions of the most current non-profit lease document form, as may be amended from time to time;
- B. Obtain all required City permits and approvals, including but not limited to, Special Management Area (SMA) permit, Conditional Use Permit within sixty (60) days.
- C. Submit subsurface archaeological survey by a qualified archaeologist subject to review and approval by the State Historic Preservation Division (SHPD); provided that if historic sites are found, a mitigation plan shall be developed and implemented to the satisfaction of SHPD within sixty (60) days.
- D. There shall be no more than four (4) retreat buildings and an entry building.
- E. There shall be no more than ninety (90) center participants on the premises at any one time.
- F. Ingress and egress to the center shall be from Humilani Street including for emergency purposes. Access for the caretaker cottage shall be from Hiwahiwa Street by a single driveway.
- G. Users of the premises shall be community groups, religious groups, non-profit organizations, government agencies, and people associated with such groups, organizations and agencies.
- H. The center shall not be used for profit purposes.
- I. The center shall not be used for commercial purposes.
- J. Activities at the center shall be of a quiet nature. Weddings, birthday parties, luaus or other similar events shall not be allowed on the premises.
- K. The Kaaawa community individuals and organizations shall be allowed to meet at the center at no charge, as approved by the program committee of the center. The program committee shall include the residents from Kaaawa.
- L. No intrusive bright outdoor lighting shall be employed.
- M. Change the withdrawal provision to allow the State to

withdraw the road remnants and sell the road remnants to the abutting property owners.

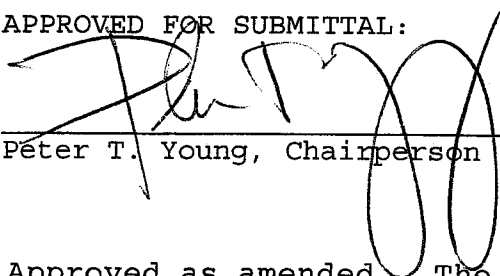
- N. Change the breach provision of non-financial items. The cure period shall be thirty (30) days.
- O. Review and approval by the Department of the Attorney General.
- P. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



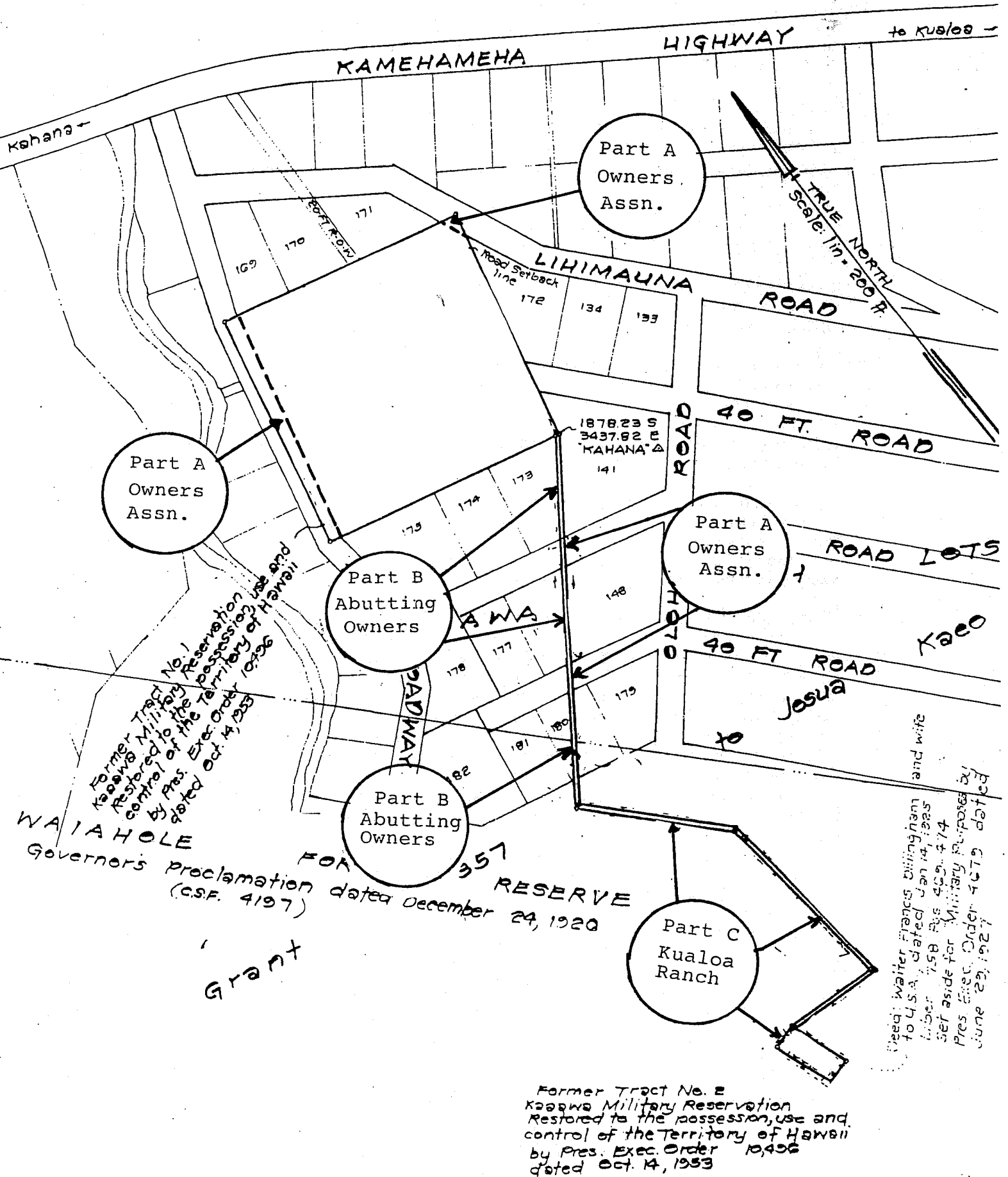
 Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson

Approved as amended. The Board amended the submittal by approving the lease conditions and stating that the rent shall not be more than \$500 per month. Staff is to bring this back for Board decision on what the annual rent should be.

EXHIBIT "A"



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 13, 2005

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Statewide

Minimum Rent Policy for New Dispositions

BACKGROUND

Pursuant to discussion among staff, we feel there is a need to balance staff time and costs against the returns from Land Division dispositions. The State should receive a fair return on the land while maintaining its duty under the public land trust.

The current lowest rent for leases and revocable permits is \$156 per year or \$13 per month. Staff cannot locate any Board approval regarding the definition or the origin of the "minimum rent". Staff believes that in the past we just administratively adopted the term.

A consulting report by local real estate appraisal and consulting firm Medusky & Co. was completed in April 2004 which addressed the state's proposed formula for calculating one-time payments for term shoreline encroachment easements. The report recommended that for small encroachments where the rent payment, when calculated using the recommended formula is less than \$500, a minimum rent be charged of \$500. The \$500 amount was derived via other small easement considerations researched from the market. This fee was considered reasonable in part for inconvenience and to defray administrative costs. The Board has adopted the \$500 minimum rent for shoreline encroachments.

RESEARCH

Staff has conducted some research into overhead and administrative costs necessary to manage new dispositions and reopenings. Other landowners were surveyed such as Campbell Estate and Kamehameha Schools Bishop Estate. Campbell does not have a universal minimum rent but every year they set their rent based on the current conditions and evaluates all new deals based on that. Calls to Kamehameha Schools were not returned. Department of Transportation (DOT) and Department of Agriculture were also surveyed as to their policy regarding minimum rent. Only DOT charges a minimum rent of \$20 per month for rental of storage areas in the harbor areas.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON *MO*

May 13, 2005

EXHIBIT "B"

ITEM D-19

Dispositions including lease, easement, license and revocable permit involve rental payments on a recurring basis or lump sum. The proposed guideline as explained below will cover these disposition but not the fee conveyances, e.g. sale of remnant or reclaimed land.

Further, staff notes that land dispositions involve multiple offices, e.g. DLNR, DAGS, AG. Staff would point out that the minimum rent recommended below only covers the staff cost of DLNR as the other agencies are only involved at the application stage. Once the disposition is consummated, DLNR is the only agency that manages the disposition and incurs staff costs. While we want to recoup part of the staff cost, staff feels that the figure has to be realistic and affordable by our tenants.

Also, time consumed for different disposition could be varied. Staff discussed the time with other districts and feels that an 8-manhour period is appropriate as the basis of this analysis.

EVALUATION:

Eight hours at a rate of \$18.91 (starting hourly rate of a Land Agent IV) is \$151.28. However, after the initial year, staff time expended on a disposition, which is in compliance with the terms and conditions, would be reduced substantially. Therefore, staff recommends a 75% discount from the total staff costs to account for the ongoing staff time on managing the disposition. Staff recommends \$40 per month or \$480 per year ($\$151.28 \times 25\% = \37.82 , rounded to \$40 per month) as the minimum rent for all dispositions involving recurring rental payment.

Staff feels the minimum one-time payment (\$500) adopted by the Board for shoreline encroachment could be used as a guideline for other term or perpetual easements as well. The report by Medusky based his findings on market data, which reviewed other minimum rent payments for a variety of other easements. The report concluded a minimum payment for small encroachment easements of \$500. Land Division has been recommending one-time payment for other types of easements (e.g. access, utility easements). Easement valuations are largely determined via independent appraisal. However, in the event the appraised value for the term or perpetual easement is below \$500, then Staff recommends a \$500 charge to cover administrative overhead. Staff feels this amount should be set as a minimum for all dispositions involving one-time payment.

RECOMMENDATION

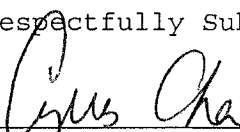
That the Board approves the above policy by requiring:

- A. All new dispositions by Land Division shall be subject to a minimum rent of \$40 per month, \$480 per year or \$500 (one-time payment) depending on the payment term.
- B. Staff shall bring any cases that require deviation from the above policy to the Board for approval.

EXHIBIT "B"

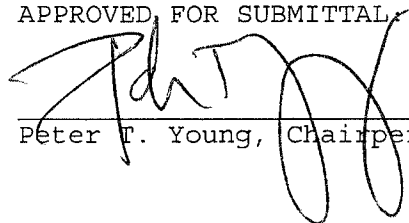
May 13, 2005

Respectfully Submitted,



Cyrus Chen
Appraisal Manager

APPROVED FOR SUBMITTAL



Peter T. Young, Chairperson

EXHIBIT "B"